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PROCEDURE IN FRANCE AND GREAT BRITAIN

her children instead of going out to work. Fourteen pensions already have been granted.

Judge Edward E. Porterfield, who framed the law, says that last year there were in the Juvenile Court more than 200 children whose mothers were widows and were compelled to work away from home. These children rapidly became delinquent. Those who were mildly delinquent were sent to the McCune farm, where the cost to the state and county is \$16.16 for each boy. In many cases with a \$15 a month allowance a widowed mother is enabled to take care of five small children while remaining at home and doing what work she can for pay.

Thus it appears that society directly benefits in a financial sense by the new law; indirectly it benefits in that the children are kept with the mother, who in most cases is their best guardian. It will be of public interest to see how this law works. If it is generally satisfactory it probably will be a precedent for similar laws in many states. Considered only as an economic measure it seems to have merit, though this is not the most important element of the problem of dealing with poor families that have lost their natural means of support.

R. H. G.

Criminal Procedure in France and Great Britain Compared.—At the London conference of the International Law Association in August, 1910, the subject of comparative criminal procedure was discussed. A paper, entitled "Criminal Procedure in France and Great Britain Compared," was read by Ernest Todd, J. P., Barrister at Law. Mr. Todd pointed out that during the period of Feudalism the development of the criminal law in the two countries was along parallel lines; that in England the method of administering justice has remained practically the same, while the French procedure was radically changed through the introduction of inquisitorial methods, which had their origin in the Inquisition of the Church.

After stating that there was no codification of the French criminal law till the year 1670, Mr. Todd enumerated as follows the principal provisions of the Ordinance enacted that year: "(i.) It gave jurisdiction in Criminal matters to the Court of the district where the crime was committed; (ii.) It limited the private jurisdictions, and extended those of the King's judges; (iii.) It limited appeal jurisdiction to the King's judges; (iv.) Great efforts were made during the discussions to supersede the jurisdiction of the Church in Criminal matters altogether, but in the end the Church triumphed and her jurisdiction was confirmed; (v.) It made the very important change that a person who made a complaint upon which criminal proceedings were taken should not *ipso facto* become liable as prosecutor to bear the costs of the prosecution, this liability only being incurred if he declared himself a 'Partie Civile'; (vi.) Provision was made for the better regulation of prisons, for food and medical aid being given to prisoners, and for a mitigation of the horrors which then existed inside the state prisons; (vii.) It confirmed the power of the Juge d'Instruction to examine the prisoner and witnesses against him secretly, but made provision for this being done within twenty-four hours of arrest (a most salutary and necessary provision, having regard to the practice then prevailing of allowing prisoners to languish in gaol without any sort of trial for an indefinite time); (viii.) The provision that a prisoner should not have the assistance of counsel during his examination by the Juge d'Instruction was confirmed; and (ix.) Pro-

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vision was made for those cases in which the accused might be subjected to the torture."

Further extracts from Mr. Todd's paper show the development of the French law of criminal procedure, and also certain differences between the procedure of France and that of England.

"This Ordinance of 1670 remained in force until the revolutionary period, commencing in 1788, when its provisions were found to be necessary of revision. After much discussion, in which comparison was made between the provisions of the procedure ruling in England with those in force in France, it was decided to make very important alterations in favor of the prisoner, and it is submitted in the direction of granting him elementary justice, for we find that by an edict of 1788, extended and slightly altered by a further edict of 1791, the following very great concessions were made: (1) the prisoner should, right from the commencement of proceedings against him, be accorded the assistance of counsel; (2) the whole of the proceedings should take place in public; and (3) the prisoner should, without cost, be supplied with copies of the depositions of all witnesses giving evidence against him. In addition to this, it was provided, that if the prisoner himself could not afford counsel, this should be provided for him at the public expense. These provisions once conceded, one would have expected them to remain for all time, a monument to the sense of justice ruling in favor of accused persons, and of the sentiments of humanity guiding those who ruled over the destiny of the French nation. So far from this proving to be the case, however, we find that during the period immediately leading up to and culminating in the first Empire, the discussion on the three points referred to above, recommences, and that in Napoleon's Code, published in 1808, all the good done by the previous discussions and provisions is abrogated, and the old vicious secret procedure is reintroduced, for by Article 73 of the Code of Criminal Procedure, it is provided, that witnesses against the prisoner shall be examined by the Juge d'Instruction, in the presence of his Registrar, *but in the absence of the prisoner.*"

"It is in regard to the preliminary inquiry in matters criminal that the greatest divergence is found, and this is fundamental, and as pointed out above, traceable to the influence of the Church in France and to the ancient rights and liberties of the people in England, existing long before, but declared and confirmed by Magna Charta and the Bill of Rights.

"In England, criminal proceedings may be initiated in a variety of ways, *videlicet*: (1) By arrest by a private person without warrant, such person having seen another in the act of committing a treason, a felony, or a dangerous wounding, or engaged in signaling to a smuggling vessel, committing an offense under the Vagrant Act, the Larceny Act, 1861, the Coinage Offenses Act, 1861, or by night, any indictable offense whatever. (2) A police constable may arrest in any of the above cases, and in addition any person whom he reasonably suspects of having committed or being about to commit any indictable offense, without warrant.

"Where arrests are made in either of these ways, the accused is taken to the police station and the inspector or sergeant in charge takes the charge (if it is properly supported) and brings the case before the magistrates in open court at the earliest possible opportunity, generally the day following the arrest. In addition to the above methods of commencing criminal proceedings there

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are the following: (a) by information, which is a written complaint made on behalf of the Crown and filed in the King's Bench Division; (b) a presentment or written accusation of crime presented on oath by a coroner's jury or grand jury; (c) by bill of indictment to the grand jury; and (d) by summons to appear; but whichever of these methods of commencement be adopted, the accused person must be tried in open court and ultimately (if the magistrates commit him for trial), by a jury of his countrymen. The French Code of Criminal Procedure, however, provides only one method of commencing criminal proceedings, and that is the one referred to in Article 1 of this particular code, which enacts that the right of commencing proceedings only belongs to the officials upon whom it is conferred by the law. Article 6 confines this to the Ministère Public, and his action must be preceded by a complaint of the party aggrieved, or by an official denunciation to the authorities by the proper authorities of the country where the offense was committed. Further, by Article 6, the proceedings must be initiated at the instance of the Ministère Public of the district in which the accused resides, or of the place where he may be found. These proceedings once commenced, the matter is handed over for investigation to an examining magistrate, who is given power by Article 59 to perform all acts attributed to the Procureur de la République, which means that in the examination of the accused and of persons who can give evidence against him, this examining magistrate has almost plenary powers. In exercising his powers and jurisdiction he can deal with the matter entirely privately, with closed doors, and is required by Article 73 to hear each of the witnesses separately, *in the absence of the accused*, assisted by his clerk or registrar.

"Until Madame Steinheil's case brought this matter prominently before the public, the accused was not entitled to be assisted by counsel before the examining magistrate, but by a law recently passed, this protection was extended to the accused, although no alteration was made in the provisions of Article 73, nor in the system of holding the preliminary inquiry in private. From the point of view of enabling the examining magistrate to get at the truth, of course there is much to be said in favor of the practice of delaying publication of particulars, until such time as all parties concerned in the perpetration of the alleged crime have been caught in the net, but it is quite obvious that this system of conducting judicial inquiries behind closed doors is open to grave abuse, and although it may in some cases work well in a country where the people are used to it, it would never be put up with in England, where we have been for so many years used to more open and generous methods, and where it is an axiom that every person is assumed to be innocent until he has been found guilty in due form of law."